

LONA McCALLISTER,	:	Order Docketing Appeal and
Appellant	:	Affirming Decision
	:	
v.	:	
	:	Docket No. IBIA 94-187-A
ACTING BILLINGS AREA DIRECTOR,	:	
BUREAU OF INDIAN AFFAIRS,	:	
Appellee	:	September 29, 1994

This is an appeal from an August 26, 1994, decision issued by the Acting Billings Area Director, Bureau of Indian Affairs (Area Director; BIA) , concerning a request for miscellaneous assistance under BIA' s financial assistance program. Appellant sought \$613 for burial costs for her grandmother, Kate Yarlott Stewart Big Lake, who died on August 8, 1965. The Area Director denied the request on the grounds that it was untimely and that appellant was not an heir of Big Lake and was therefore not responsible for the funeral bills.

Appellant's appeal documents indicate that she is either seeking reimbursement for burial expenses paid in 1965 or that she is seeking funds with which to purchase a headstone at this time.

According to appellant, Big Lake's total funeral bill was \$1,113, of which the Crow Tribe paid \$500 under a tribal burial program. Appellant submits a copy of the Order Determining Heirs in Big Lake's estate. That order, issued on February 28, 1966, by Examiner of Inheritance David J. McKee, shows that claims for funeral expenses, totalling \$613, were approved for payment from the estate. 1/ The order shows that the claims were made by a funeral home, not by appellant. It is evident, therefore, that appellant did not pay Big Lake's funeral expenses.

The order also shows that appellant was not an heir of Big Lake. 2/ Any objection to payment of the claims from the estate should have been made at the time of probate. It is now far too late to do so. Further, because she is not an heir, appellant lacks standing to object to payment of the claims from the estate.

1/ The Examiner approved a preferred claim in the amount of \$250 and a general claim in the amount of \$363.

2/ Appellant contends that she became an heir of Big Lake when her father died in 1966. Appellant does not identify her father, but the Board assumes he was one of Big Lake's four sons, who are listed as her heirs on the Order Determining Heirs. Because appellant's father was still living when Big Lake died, appellant could not be an heir of Big Lake.

Appellant's present request for miscellaneous assistance faces other obstacles. For one thing, BIA's financial assistance program is clearly intended to assist eligible Indians meet their current financial needs, not reimburse them for expenses from the distant past. Thus, even if appellant could show that she had paid Big Lake's funeral expenses in 1965 and could further show that she is an eligible recipient of BIA financial assistance, she could not show that she should be reimbursed for the 1965 payment.

In fact, however, appellant cannot show that she is an eligible recipient of BIA financial assistance. Thus, even assuming appellant is seeking funds for a current expense, i.e., purchase of a headstone, and even assuming headstones are within the meaning of "burial services" in 25 CFR 20.1(q) 3/, appellant cannot prevail. 25 CFR 20.20(a) requires, inter alia, that an applicant for financial assistance reside on a reservation or in a near-reservation area designated by the applicant's tribe. 4/ Appellant is a member of the Crow Tribe but lives in Livermore, California. Accordingly even if she meets the need criteria of the regulations, she cannot meet this eligibility criterion.

It is apparent that there is no set of circumstances under which appellant can prevail in this appeal. Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, this appeal is docketed, and the Area Director's August 26, 1994, decision is affirmed.

Anita Vogt
Administrative Judge

Kathryn A. Lynn
Chief Administrative Judge

3/ 25 CFR 20.1(q) defines "miscellaneous assistance" as "a financial payment made for burial services, to facilitate the provision of emergency food or disaster programs, or for other financial needs not defined in this part but related to assistance for needy Indians."

The Board does not decide here that headstones are intended to be covered in the term "burial services" in this provision. The Board makes an assumption for purposes of this decision only, in order to give appellant the benefit of any doubt.

4/ Applicants for miscellaneous assistance are required to meet the basic eligibility requirements in 25 CFR 20.20(a). See 25 CFR 20.23, which provides:

"In the absence of other resources, miscellaneous assistance shall be provided to eligible Indians meeting the requirements of § 20.20(a): Provided, That they reside in areas where comparable miscellaneous assistance is not available or is not being provided to all residents on the same basis from a State, county or local public jurisdiction."